IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1703 OF 2005

Rajesh @ Raju V. Mishra ...Petitioner

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr. Shushil L. Mishra, Advocate for Petitioner

Mr. P.S. Hingorani, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 13TH JULY, 2005

P. C.:-

1. Heard both sides.

2. The petitioner is seeking quashing of F.I.R. relating to C.R. No. 85 of 2005 which has been registered at Charkop police station. The said case is mainly under Section 324 of I.P.C.

3. I have perused the F.I.R. relating to the said case. In the said case the complainant Varonica D'Costa has stated that on 29.6.2005 after 1.00 p.m. when she was proceedings towards the office, the petitioner assaulted her with sharp edged weapon. Thus, it is seen that the statement of Varonica D'Costa clearly implicates the petitioner in the case

under Section 324 of I.P.C..

4. The learned advocate for the petitioner has submitted that the petitioner was not present at the place of the incident and he has been falsely implicated in the said case. It is further submitted that at the relevant time the petitioner was in the Court attending the case relating to C.R. No. 135/SW/2004 which was before the learned Additional Chief Metropolitan Magistrate, 24th Court, Borivali Mumbai. Reliance has been placed on the letter dated 30.6.2005 wherein the advocate has stated that the petitioner was present in the Court till about 1.15 p.m.. The incident in the present case had taken place at 1.00 p.m.. Thus, it is submitted that the petitioner is not involved in the incident and he has been falsely implicated on account of previous enmity. In the present case, the investigation is going on. The petitioner has taken the defence of alibi. The defence of alibi would have been proved by him during the trial by leading evidence. At this stage as the investigation is going on, I am not inclined to rely on the said defence. As stated earlier, in the F.I.R. the complainant has clearly stated about the role played by the petitioner i.e. assault on her by the petitioner by sharp edged weapon. The investigation is going on. Thus, in my view, at this stage, no case is made out for quashing

of F.I.R. It would be open to the petitioner to seek quashing of F.I.R. and charge sheet when the charge sheet is filed.

5. The learned advocate for the petitioner prayed that the petitioner may be granted anticipatory bail in the present case i.e. C.R. No.85 of 2005. The learned A.P.P. on instructions states that prior to the petitioner being arrested, the petitioner will be given 72 hours notice. Thus, if the investigating agency is of the opinion that the custody of the petitioner is necessary, the investigation agency shall give 72 hours notice to him prior to his arrest. On such notice being received, the petitioner shall prefer necessary application before the concerned Sessions Court.

6. Writ petition is disposed of in terms of the above order.

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